IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

OP.No. 3422 of 1998(S)

AGAINST ORDER IN RA.92/COCH//1997 IN GTA 32/1994 OF THE INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH

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PETITIONER:

SRI.MMND MUTHAIYAH RAJASABAI,
NAAGATHENAA, RESIDENCY ROAD,
ASRAMAM, QUILON.

BY ADV. SRI.P.BALACHANDRAN

RESPONDENT:

COMMISSIONER OF GIFT TAX,
TRIVANDRUM

BY STANDING COUNSEL, GOVT. OF INDIA (TAXES)
MR.GEORGE K.GEORGE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.3422 of 1998

Dated, this the 25th day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

This is a petition filed by the assessee under Section 26(3) of the Gift Tax Act, 1958 ('Act' for short).

(2) The assessee being aggrieved by the orders passed by the Commissioner of Gift+ Tax (Appeals) Thiruvananthapuram, had filed second appeal before the Income Tax Appellate Tribunal, Cochin Bench, Cochin in G.T.A.No.32 of 1994 for the assessment year 1989-90.

(3) The Tribunal has rejected the assessee's appeal by its order dated 28th January, 1997.

(4) The assessee had filed a petition under Section 26(1) of the Act, inter alia, requesting the Tribunal to refer the following questions of law for our consideration and decision:

> "1. Whether on the facts and in the circumstances of the case, the appellate Tribunal was justified in coming to the conclusion that the amount available in the account of Sri.Sankaralingam Roopkumar which was interest free should not be excluded for determining the value of the taxable gift?
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> 2. Whether there were materials for the appellate Tribunal to come to the conclusion that the amount lying in the current account of Sri.Sankaralingam Roopkumar, interest free cannot be considered as adequate consideration for arriving at the taxable gift as the small withdrawals for payment of taxes etc. were only against the anticipated profits?
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> 3. Whether the Appellate Tribunal was right in evaluating the goodwill in a reconstitution of the firm especially where the incoming partner had undertaken to bear the liabilities of the firm and had agreed to work for the firm and undertaken to suffer losses and risks attached to the business?

4. Even assuming that there was a gift whether the method and manner of valuation of such gift by the tribunal was correct, just and proper?

5. Whether the Appellate Tribunal was justified in disallowing remuneration for all the partners especially when the assessed profit from the assessment year 1984-85 was taken into consideration and also enhance interest at 18% on the capital?

(5) The Tribunal has rejected the petition filed by the assessee. Therefore, the assessee is before us in this petition filed under Section 26(3) of the Act requesting us to direct the Tribunal to refer the questions of law raised by it for our consideration and decision.

(6) The questions of law raised by the assessee in this petition filed under Section 26(3) of the Act are no more debatable in view of the law declared by the apex Court in the case of *Commissioner of Gift Tax* v. *T.M.Louiz* [(2000) 245 ITR 831]. Since the questions of law raised by the assessee have already been decided by the apex Court, at this stage, we need not to have directed the Tribunal to state the case and refer the questions of law for our consideration and decision. Therefore, the petition requires to be rejected and it is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns